25-3343

OGC Has Reviewed

3 February 1955

Memorandum for: Deputy Assistant Director for Personnel

Subject : Implementation of Section 1310, Supplemental Appropriations Act, 1952, As Amended

1. Your memorandum of 11 January 1955, same subject as above, requests our views with respect to the position the Agency may take in connection with Section 1310, Supplemental Appropriations Act, 1952, as Amended. Specifically involved, though not exclusively, is Section 204 of Executive Order 10577, November 22, 1954, which confers upon the Civil Service Commission the responsibility to determine the division of allowable permanent appointments within and between the excepted service and the competitive service.

2. A review of the Agency position may be helpful. The implementation of the early Whitten Amendment, i.e., Section 1302 of Public Law 843, 81st Congress, was accomplished through Executive Order 10180, 13 November 1950. At the insistence of this Agency, certain language was inserted to enable appointments to be made on a permanent basis. Thereafter, in accordance with the inserted language, the DCI determined that, because of security hazards attendant in the temporary appointment procedures, appointments would be made on a permanent basis. Subsequent revisions to the Whitten Rider were not considered to have disturbed the Agency position, such revisions being viewed as a reaffirmation of Executive Order 10180. Up to the time, therefore, of Executive Order 10577, we believe that the Agency position with respect to the non-applicability of the Whitten Rider is sustainable.

3. By letter of 8 October 1954, the Bureau of the Budget circularized the executive establishments and agencies with respect to proposed Executive Order 10577, amending the Civil Service rules and authorizing a new appointment system for the competitive service, amongst a number of other things. At that time we remarked that the term "excepted service", as it was defined therein, had no

apparent limit to its extension and appeared to confer in the Civil Service Commission the right to exercise some jurisdictional responsibility over the Central Intelligence Agency. We therefore recommended that some clarification, or in the absence thereof, some understanding be sought so as to preserve the integrity of our personnel administration. The Deputy Assistant Director for Personnel concurred in the remarks referred to above. Our remarks were then communicated to the Bureau of the Budget by Agency letter dated October 22, 1954, signed by the Deputy Director (Administration). A reading of Executive Order 10577 clearly demonstrates that no change was made nor apparent consideration given to the expression of concern contained in the aforesaid letter. We thus fail to perceive any language in the nature of a loophole, for which reason it may be argued the Agency is affected. However, we believe the better position to be that the personnel administration of this Agency is dependent upon unusual considerations relating to appointment control, supervision, discipline, etc., and not a proper case for the application of conventional household standards. We would thus respond in the affirmative to the questions raised in sub-paragraphs 6a., b., and c. of your memorandum. We emphasize, however, that this is merely a position and not an unassailable actuality. We believe that discussions between representatives of the Agency and the Civil Service Commission should be conducted in the light of the foregoing statements and agreement reached, if possible, with respect to the non-applicability of the statute and the executive order rather than an acknowledgment that jurisdictional or other enforcement responsibilities will not be exercised as a matter of Commission policy.

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Assistant General Counsel

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